by saying *e.g.* "I am not satisfied on the evidence that no other suitable accommodation is available for the tenant" that might have helped. Unfortunately, he did not use words like these but stated baldly that there was a burden on the tenant to discharge to the satisfaction of the court that he had no other accommodation which he had not discharged.

(iii) The district judge went and viewed all the various sites and premises which had been mentioned in the evidence together with both counsel in the case before him. Unfortunately, he does not seem to have taken the time-honoured course of recording evidence of his visit through the mouth of a witness. There is conflict of evidence, for example, as to what the state of the premises at 187 Clemenceau Avenue was when the district judge visited it, when one considers the evidence of the defendant and his father as to the amount of space available at 187 Clemenceau Avenue. The son said that there were only 4 or 5 machines there whereas the father said that there were more than 10. In recording his observations or what he found at 187 Clemenceau Avenue no mention is made at all about the number of machines which the district judge saw. He merely concerned himself with the number of packages he saw strewn around rather haphazardly which led him to the conclusion that space could be created with better organisation. Unfortunately, there is no mention of how many machines there actually were present. There is again a hazy record in regard to the ground floor at 213 Clemenceau Avenue. Again, with regard to No. 8 Oldham Lane which it was stressed was a place which could be utilised for the landlord's business, here again there is a hazy note of what the district judge actually saw. The district judge seems to have accepted it as a fact that it would be impossible to combine the business of spray painting with upholstery business at 8 Oldham Lane which he found to be capable of accommodating at least 15 cars at a time. No consideration seems to have been paid to the question whether that large space could not have been partitioned in such a way as to prevent spray painting from interfering with the nature of the upholstery business.

These are a few of the unsatisfactory features about the trial of which I made mention so that they may be of some assistance to the district judge who will hear the case anew. I am not saying that the present district judge who heard the parties did not have material on which he could have reached the same conclusion as he did. But for the reasons I have stated earlier I am of the view that there should be a re-trial before another district judge. The appeal is accordingly allowed with costs subject to the order for a fresh trial.

*Appeal allowed, Retrial ordered.*

Solicitors: *J. B. Jeyaretnam & Co.; S. K. Lee & Co.*

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## MANAP BIN MAT v. GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD.

[C.A. (Wee Chong Jin C.J., Tan Ah Tah & Winslow JJ.)

January 18, 1971]

[Singapore — Civil Appeal No. 36 of 1970]

*Insurance — Motor insurance — Extended cover — Third-party risks — Disclaimer — Meaning of "insured" — Motor Vehicles (Third-Party Risks & Compensation) Ordinance, 1960, s. 4(3).*

This was an appeal from an order of the High Court, setting aside an interim award of two arbitrators who dismissed the plea that the arbitration proceedings were time barred under condition 8 of a motor insurance policy, since it had been commenced more than 12 months after disclaimer of liability by the respondents. The relevant portion of condition 8 reads as follows: "... If the corporation shall disclaim liability to the insured or any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder."

The claim arose out of a road accident on August 8, 1963. A private motor car No. SR7408 driven by one *ED* with the authority of *SB*, its owner and policy holder, collided with a motor lorry as a result of which *ED* and two passengers were killed. The appellant, claimant in the arbitration proceedings, was the administrator of the estate of *ED*. He claimed to be indemnified under the terms of the insurance policy issued by the respondents. However, as the deceased driver was not a party to the policy, the claimant relied on the provisions of section 4(3) of the Motor Vehicles (Third-Party Risks and Compensation) Ordinance, 1960.

The preliminary point for determination was that since the respondents had disclaimed liability to the policy holder for any claim under the policy, and since the claimant had not referred his claim to arbitration under the provisions of the policy, the claim was time barred under condition 8 of the policy.

**Held,** allowing the appeal: (1) in the insurance policy under consideration, there was not one contract of insurance only as there was one contract with the policy holder, and another contract with such person driving on the policy holder's order or with his permission;

(2) throughout the conditions of this policy of insurance, "insured" has to be read, so far as they can apply beyond the insured, as meaning "insured or any other person who is insured" by virtue of the relevant clause in the policy;

(3) accordingly, condition 8 in the policy would apply to such a person, not only to the extent that such a person would be bound to submit to arbitration but also, the words "shall disclaim liability to the insured" has to be read as meaning "shall disclaim liability to the insured or any other person who is insured" by virtue of the relevant clause in the policy.

*Case referred to:-*

(1) *Digby* v. *General Accident Fire and Life Assurance Corporation Ltd.* [1942] 2 All E.R. 319; [1943] A.C. 121.

COURT OF APPEAL.

*Denis Murphy* and *J. Dunbar* for the appellant.

*G. S. Hill* for the respondents.

*Cur. Adv. Vult.*

**Wee Chong Jin C.J.** (delivering the judgment of the court): This is an appeal by the appellant from an order made by Chua J. dated the 21st day of August 1970 setting aside an interim award made by

two arbitrators, Mr. A. P. Godwin and Mr. J. Grimberg, that award having been made on the 5th June 1970 under which the arbitrators dismissed the plea that the arbitration proceedings were time barred under condition 8 of a motor insurance policy in that the arbitration proceedings had been commenced more than 12 months after a letter of repudiation by the respondents dated the 25th March 1964.

The claim which was referred to the arbitrators arose out of a collision between two motor vehicles, a private motor car No. SR. 7408 and a motor lorry, which occurred on 8th August 1963. Motor car No. SR. 7408 was owned by one Shaik Baobid to whom the respondents had issued a policy of insurance pursuant to which the car was insured from 9th July 1958 to 8th July 1959. This policy was renewed from time to time and was in force on 8th August 1963.

As a result of the said collision the driver of the car, Elahideen Doray bin Booso and two passengers were killed and four other passengers were injured. Elahideen Doray, the driver of the car at the time of the accident, was driving it with the authority of the owner and policyholder, but not as the policyholder's servant or agent.

Several actions were commenced in the High Court in Johore by the legal personal representatives of the two deceased passengers and by the four injured passengers against the court appointed representative of the estate of the deceased driver and the owner of the lorry. The actions were consolidated and eventually the deceased driver was held to be solely responsible for the collision and damages were awarded against his estate on 19th September 1967.

The claimant in the arbitration proceedings, who is the appellant in the present appeal, is the administrator of the estate of the deceased driver of the car and his claim is to be indemnified under the terms of the policy of insurance issued by the respondents. As the deceased driver was not a party to the policy of insurance the claimant relies on the provisions of section 4(3) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960.

The relevant provisions of the policy are as follows: —

*"Section II — liability to third parties*

1. The corporation will subject to the limits of liability indemnify the insured in the event of accident caused by or arising out of the use of the motor vehicle against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of:

(a) death of or bodily injury to any person except where such death or injury arises out of and in the course of the employment of such person by the insured and excluding liability to any person being a member of the insured's household who is a passenger in the motor vehicle unless such person is being carried by reason of or in pursuance of a contract of employment.

(b) damage to property other than property belonging to the insured or held in trust by or in the custody or control of the insured or any member of the insured's household.

2. In terms of and subject to the limitations of and for the purposes of this section the corporation will indemnify:

(a) any authorised driver who is driving the motor vehicle provided that such authorised driver:

(i) shall as though he were the insured observe, fulfil and be subject to the Terms of this Policy insofar as they can apply.

(ii) is not entitled to indemnity under any other policy.

(b) the insured whilst personally driving a private motor car (but not a motor cycle) not belonging to him and not hired to him under a hire purchase agreement.

*Condition 3:*

The insured shall take all reasonable steps to safeguard the motor vehicle from loss or damage and to maintain the motor vehicle in efficient condition and the corporation shall have at all times free and full access to examine the motor vehicle or any part thereof or any driver or employee of the insured. In the event of any accident or breakdown the motor vehicle shall not be left unattended without proper precautions being taken to prevent further loss or damage and if the motor vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the motor vehicle shall be excluded from the scope of the indemnity granted by this policy.

*Condition 8:*

All differences arising out of this policy shall be referred to the decision of an arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single arbitrator to the decision of two arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the arbitrators do not agree of an umpire appointed in writing by the arbitrators before entering upon the reference. The umpire shall sit with the arbitrators and preside at their meetings and the making of an award shall be a condition precedent to any right of action against the corporation. If the corporation shall disclaim liability to the insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

*Condition 9:*

The due observance and fulfilment of the terms of this policy insofar as they relate to anything to be done or not to be done by the insured and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of the corporation to make any payment under this policy."

About eight months after the collision, on 25th March 1964 the respondents, through their solicitors, sent a letter to the policyholder repudiating liability under the policy. This letter reads as follows: —

"Dear Sir,

*Policy No. MV.47086*
*Motor car No. SR.7408*

We act for the General Accident Fire & Life Assurance Corpn. Ltd., the insurers of motor car No. SR.7408 which was owned by you on the 8th August, 1963.

We are instructed that according to condition 3 of the policy you were required to take all reasonable steps to safeguard the motor vehicle from loss or damage and to maintain the motor vehicle in an efficient condition and that due observance and fulfilment of the terms of the policy was a condition precedent to any liability of the Corporation to make any payment under the policy.

We are instructed further that on or about the 8th August 1963 you have, in contravention of the said condition, failed to take all reasonable steps to safeguard the said insured motor vehicle from loss or damage and to maintain the said motor vehicle in efficient condition. Our clients' investigations reveal that the said vehicle was equipped with unserviceable shock-absorbers and that the vehicle was driven while it was grossly overloaded.

We hereby give you notice on behalf of our clients the General Accident Fire & Life Assurance Corpn. Ltd. that our clients hereby repudiate liability under the policy. If our clients become liable to make any payments to third parties who may have suffered damages in the accident which occurred on 8th August 1963 at the 33rd m.s. our clients reserve the right to recover any such payment from you.

Yours faithfully,
Sd. Rodyk & Davidson.
Solicitors for the General Accident
Fire & Life Assurance Corpn. Limited.

Shaik A.B.M. Baobid,
7 Lorong 35, Geylang,
Singapore.

*A.R. REGISTERED.*
c.c. The General Accident Fire &
Life Assurance Corpn. Ltd., Singapore."

The point we have to deal with is the preliminary point taken by the respondents before the arbitrators that as they had disclaimed liability to the policyholder for any claim under the policy and as the claimant's claim was not referred to arbitration under the provisions of the policy, the claim was time barred under condition 8 of the policy.

The respondents' case is this. Although it is settled law that where an authorised driver comes within the terms of the policy, the effect of the clause extending cover to an authorised driver is to bring into existence a second contract of insurance between the insurers and this authorised driver (see *Digby* v. *General Accident Fire and Life Assurance Corporation, Ltd.*[1]) the substratum of this second contract is the original contract between the insured and the insurers and this fresh promise of indemnity falls with the rest of the policy if the main contract between the insured and the insurers is brought to an end. They, the respondents, have repudiated liability under the policy on the grounds of a breach of condition 3 by their said letter of 25th March 1964 to the policyholder and therefore condition 8 on its proper construction applies and the legal personal representatives of the authorised driver are time barred in respect of their claim under the policy.

They submit that, although the claim is not one made by the insured but on behalf of the estate of the authorised driver, they need give notice of disclaimer of liability for any claim under the policy only to the insured, in this case on the ground of a breach of condition 3, and the notice of disclaimer to the insured is effective against the authorised driver because there can be only one effective repudiation of liability under the policy.

The appellant's case on the other hand, is that on the true construction of condition 8 of the policy, when the claim to be indemnified under the policy is made by the authorised driver, the words "shall disclaim liability to the insured" in condition 8 must, on the authority of *Digby's* case, *supra*, be read as "shall disclaim liability to the authorised driver".

The arbitrators accepted the appellant's contention but on appeal, as we have stated, Chua J. accepted the respondents' contention because, in his view, "Condition 8 contemplates that repudiation is to the insured and under the terms of the policy the authorised driver is bound by such notice as though he were the insured". The learned judge also held that the effect of the repudiation in this case "is to bring the contract to an end and it operates against the whole world and the liability of the respondents except for statutory liability ceases".

We are unable to agree with the learned judge's decision. *Digby's* case, *supra*, is settled authority that in a policy such as that in question there is not one contract of insurance only. There is one with the policyholder and one also with each person driving on his order or with his permission (*per* Lord Porter at page 332). Again, in *Digby's* case, *supra*, Lord Wright at page 329 said: —

> "The identity of the insured may change under the operation of cl. 3, and in like manner the identity of the party, in facts like those in question, may change. The policyholder thus may become under cl. 3 the third party to whom the new insured, the chauffeur, has become liable. The policy, in its primary import, is no doubt a single insurance for the benefit of a single insured; but cl. 3 involves that it may during its currency cover a new insured, in place for the time of the original insured, if the circumstances postulated by cl. 3 come into effect.
>
> The new insured, it is to be noted, is by the terms of cl. 3 to "observe, fulfil and be subject to the terms, exceptions and conditions of the policy so far as they apply." Thus he is bound by condition 8, the arbitration clause, as the Court of Appeal, agreeing with the court below, held. In other words, throughout the conditions 'policyholder' has to be read, so far as they can apply beyond the policyholder, as meaning "policyholder or any other person who is insured by virtue of section 2(3)." Thus, for instance, condition 1 (notices), condition 2 (claims and legal proceedings and their conduct) would apply to such a person. Condition 6 (contribution if there is another insurance) would, it seems, not so apply because cl. 3 is subject to the proviso that there is to be no other insurance subsisting under which such other person may be indemnified. Conditions 3 and 5 are also conditions which would not apply to any insured other than the policyholder.
>
> This short point of construction to my mind concludes the matter. I find nothing in the rest of the policy inconsistent with that meaning."

In the policy we are considering, there are clauses and conditions similar to the ones considered and referred to by Lord Wright, *supra*, and we are similarly of the view that in this policy of insurance throughout the conditions "insured" has to be read, so far as they can apply beyond the insured as meaning "insured or any other person who is insured by virtue of clause 2 of section II." On this view, condition 8 would apply to such a person, not only to the extent that such a person would be bound to submit to arbitration but also, in our opinion, the words "shall disclaim liability to the insured" has to be read as meaning "shall disclaim liability to the insured or any other person who is insured by virtue of clause 2 of section II."

The solicitors on behalf of the estate of the authorised driver made this claim against the respondents on 1st August 1969 to which claim the respondents, through their solicitors, replied on 2nd August 1969 to the effect that they had already repudiated liability to the insured for breach of "policy conditions". On the same day, 2nd August 1969, the appellant as administrator of the estate of the authorised driver made a formal reference to arbitration.

On these facts we accordingly hold that the appellant's claim against the respondents under the policy is not time barred and that the arbitration proceedings must proceed. The appeal is allowed with costs.

*Appeal allowed.*

Solicitors: *Murphy & Dunbar; Rodyk & Davidson.*

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## MELVANI v. PUBLIC PROSECUTOR

**[A.Cr.J. (Wee Chong Jin C.J.) March 17, 1971]**

**[Singapore — Magistrate Appeal No. 188 of 1970]**

*Criminal Law and Procedure — Plea of guilty — Mitigating factor — Good character — Consideration in assessing sentence.*

*Criminal Law and Procedure — Currency notes — Forgery — Trial judge importing his own view.*

Where an accused person pleads guilty the court in assessing sentence ought to consider such a plea as a mitigating factor. What weight ought to be given by the court depends on the other facts made known to the court at the time the sentence is considered. Similarly good character is always a circumstance which a court ought to consider in assessing sentence.

In so far as arriving at a finding of facts as to whether a forged document, in this case a currency note, was or was not a good forgery, it was undesirable for the trial judge without the benefit of any evidence at all on the question to import his own view of the forgeries in question.

MAGISTRATE'S CRIMINAL APPEAL.

*Dato' David Marshall (J. G. Advani* with him) for the appellant.

*Isaac Paul Ratnam* (Deputy Public Prosecutor) for the respondent.

**Wee Chong Jin C.J.** (delivering oral judgment): The appellant was charged with 2 others of having committed the offence of having in their joint possession about $10,000 worth of U.S. currency knowing the same to be counterfeit and intending to use them as genuine. All three pleaded guilty and the trial judge in accepting their pleas sentenced the other two accused to a term of imprisonment for two years but sentenced the appellant to imprisonment for a term of three years, the trial judge distinguishing his case on the ground that he was the main culprit and also because he had tried to mislead the court by informing the court through his counsel that the counterfeits were so well done as to be hardly distinguishable from genuine notes of the same denominations.

Before me, through his counsel, he has appealed against the sentence on the grounds that the trial judge ought to have taken his plea of guilty as a mitigating factor and ought not to have imported the trial judge's own view that the counterfeit notes were so badly made as to be abvious to the trial judge and therefore obvious to the appellant who had considerable experience in dealing with tourists and therefore personal knowledge of what are genuine U.S. currency notes. Another ground was that the trial judge failed to take into consideration the evidence of good character. In principle I consider it proper that where an accused person pleads guilty the court in assessing sentence ought to consider such a plea as a mitigating factor. What weight ought to be given by the court depends on the other facts made known to the court at the time the sentence is considered. Similarly good character is always a circumstance which a court ought to consider in assessing sentence.

As regards the other ground of appeal namely that it was wrong in law for the trial judge to reject the statement made on his behalf by his counsel that at the time when he accepted the notes in payment for the goods purchased from him he did not realise they were counterfeits merely on the trial judge's own view of the nature of the forgeries in question. I consider the point well taken in that in so far as arriving at the finding of facts as to whether the forged document, in this case a currency note, is or is not a good forgery, it is undesirable for a trial judge without the benefit of any evidence at all on the question to import his own view of the forgeries in question. This being the position as I see it I can properly review the sentence imposed when considering what is a proper sentence on the facts as appear in the record before me.

Now, the first factor is that his two other co-accused were sentenced to a term of two years' imprisonment. Although the appellant appeared to be the main culprit in that he started the chain of events which led to the other two accused coming into possession of the forgeries, on the face of the record, and this appears not to be contradicted, a reasonable explanation was given that he had received them in payment of goods sold by him. Taking into consideration the fact that he had pleaded guilty, the fact that he had a good character, the fact that for a person in his situation in life a sentence of imprisonment however short it may be would be a real punishment for this offence in every sense of the word for him and the fact that his other two co-accused were sentenced to a lesser term of imprisonment I would reduce the sentence to a similar term of two years. Having regard to the reasons I have earlier stated, the sentence will run from the same date as the sentences in respect of the other two accused.

*Sentence reduced.*

Solicitors: *Advani & Hoo.*